

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CHARTERED ACCOUNTANTS REFERENCE No 1 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-
and
HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

COUNCIL OF INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA
Versus
Y.M. MANSURI

Appearance:

1. CHARTER ACCOUNTANT REFERENCE No. 1 of 2001
MR SN SOPARKAR for Applicant.
MR SAMIR N.DIVETIA for Respondent.
-

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 11/01/2005

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 This is a Reference under Section 21(5) of The Chartered Accountants Act, 1949 (the Act). The petitioner, Council of the Institute of the Chartered Accountants of India has recommended in terms of Section 21(5) of the Act that the respondent be removed from the Register of Members for a period of six months.

2 The Commissioner of Income Tax, Gujarat III, Ahmedabad (the complainant) made the following allegations against the respondent :

"1. The Respondent in his statement on oath

u/s 131 of the I.T. Act, 1961 on 11.11.1992 mentioned that books of accounts of M/s. Arti Enterprises for Financial Year 1990-91 were audited by him under Section 44AB in the month of January, 1992 and the certificate for the audit was given to the party some time in February, 1992, whereas, the Respondent signed the Audit Report on back date, i.e., 30th October, 1991 much before the date of completing the audit to oblige his friend Shri Bhupendra L. Patel who was the consultant of M/s. Arti Enterprises at that time. The Respondent signed the back dated report to save M/s. Arti Enterprises from the rigorous of the penalty under Section 271B of the Income-tax Act, 1961.

2. Also there were no markings anywhere in

the books by the Respondent, which is normally done when the books are audited. It, therefore, appears that the Respondent had prepared the Audit Report U/s. 44AB of I.T. Act, 1961 without proper verification of the books of accounts."

3 The petitioner followed the requisite procedure prescribed under the Chartered Accountants Regulations, 1988 (the Regulations) and after the respondent was accorded full and proper opportunity to meet with the case of the complainant, came to the conclusion that the respondent was guilty of professional misconduct within the meaning of clauses 5, 6 and 7 of part-I of Second Schedule to the Act. The facts are undisputed and there is no grievance made on behalf of the respondent as to violation of principles of natural justice or any

procedural irregularity. Hence, it is not necessary to set out the details in relation to the inquiry conducted by the Disciplinary Committee and the hearings conducted by the petitioner Council.

4 The respondent, at the material time was a practicing Chartered Accountant having a standing of 15 years. It appears that the respondent was required to issue Tax Audit Certificate as required under Section 44AB of the Income Tax Act, 1961 for Financial Year 1990-91. Admittedly the said certificate is bearing the date of 30/10/1991. The complainant, during course of survey proceedings, at the premises of M/s. Arti Enterprises found that the Books of Accounts of the said concern had not been completed at least till April/May 1992 as per statement of Accountant of the said concern. In these circumstances, the complainant recorded a statement of the respondent on oath under Section 131 of the Income Tax Act, 1961. In the said statement, the respondent categorically accepted the fact that the certificate was in fact issued some time in February 1992 and that actual audit of the Books of Accounts had been carried out only in January 1992. That the respondent had issued the back dated certificate showing completion of audit in October 1991 only at the behest of and to oblige his friend one Shri Bhupendra L. Patel, Tax Consultant of M/s. Arti Enterprises. The complainant has also averred that the Books of Accounts did not bear any markings to show that any audit was in fact carried out and hence, according to the complainant, the tax audit report was prepared without examination and verification of the Books of Accounts.

5 The Disciplinary Committee of the petitioner Council concluded that the respondent was guilty of both the charges and was thus guilty of professional misconduct within meaning of Section 21 read with Section 22 of the Act as stipulated in clauses 5, 6 and 7 of Part-I of Second Schedule to the Act. The conclusion of the Disciplinary Committee has been accepted by the petitioner Council.

6 Mr. S. N. Soparkar, learned Senior Advocate appearing on behalf of the petitioner Council submitted that the respondent had accepted in his statement recorded under Section 131 of the Income Tax Act as well as in written communication addressed to the petitioner that he had back dated the certificate issued under Section 44AB of the Income Tax Act. It was further submitted that in relation to the second charge also the Disciplinary Committee and the Council had arrived at a

conclusion that the respondent had failed to carry out the audit of the Books of Accounts and thus was guilty qua the second charge made by the complainant. He accordingly submitted that the petitioner Council had recommended removal of the name of the respondent from the Register of Members for a period of six months and the same was required to be accepted, and no relief was required to be granted in the facts and circumstances of the case.

7 Mr.Samir N.Divetia, learned Advocate appearing on behalf of the respondent submitted that in so far as the first charge was concerned it was on record that the respondent had issued certificate in February 1992 but dated the same to read as on 30/10/1991 only to oblige his friend Shri Bhupendra L.Patel. That the respondent had otherwise no malafide intention; that no loss of revenue had occasioned; and even otherwise the issuance of such back dated certificate had not resulted into any undue advantage to anyone including the respondent. That it was on record that the respondent had been paid professional fee of Rs.1,000/- only and there was no motive, in so far as respondent was concerned, in issuing the said certificate. In these circumstances, according to him a lenient view was required to be taken considering the fact that the respondent had an unblemished career record of more than 15 years.

In relation to the second charge Mr.Divetia submitted that it was incorrect to state that no audit work had been carried out by the respondent. That even otherwise, the respondent was in a position to establish that in fact he had carried out audit of the Books of Accounts through his Articled Clerks. The respondent had also stated that the respondent had personally verified the balance sheet and the profit and loss account. Therefore, according to him in light of this fact situation the recommendation of the Council to visit the respondent with penalty of removal from the Register of Members for a period of six months was excessive and was required to be suitably reduced.

8 The facts available on record are undisputed. The respondent has admittedly issued a back dated certificate. The contention that back dating of the tax audit report has not occasioned any loss of revenue nor has it benefitted anyone does not merit acceptance. Though in financial terms, the respondent may be correct in stating that there is no loss of revenue, but the said contention is bereft of any substance when the underlying idea of obtaining tax audit report is considered. In

case of Council of Institute of Chartered Accountants of India Vs. Mukesh R.Shah, AIR 2004 Gujarat 164, this Court has laid down in the following terms the importance of Auditor's report in tax proceedings :

"21. Similarly under the Income-tax Act, 1961, Section 288 stipulates as to who can appear as authorized representative of an assessee under the said Act. Section 288(2)(iv) states that an Accountant can be an authorized representative. The Explanation below the said sub-section specifies that in this Section, namely Section 288 of the said Act 'Accountant' means a chartered accountant within the meaning of the Act. The Income-tax Act stipulates compulsory audit of accounts in relation to various categories of assessees for different purposes. Section 12A of the said Act stipulates that the accounts have to be audited by a Chartered Accountant in case of a trust or institution seeking registration. Similarly Section 44AB of the said Act provides for audit of accounts of certain persons carrying on business or profession. There are various provisions permitting deductions in respect of certain incomes under Chapter VI-A of the said Act wherein it is necessary to obtain a separate audit report in relation to the specified deduction under a particular provision. Section 142(2A) of the Income Tax Act empowers the assessing officer to obtain a special audit report from a Chartered Accountant nominated by the Chief Commissioner or Commissioner. It is not necessary to refer to the various provisions in detail, suffice it to state that the revenue authorities rely upon the integrity of a Chartered Accountant to assist the tax authorities in finalizing assessment on the basis of the audit report submitted by such Chartered Accountant. The decision rendered by the Delhi High Court in the case of Additional Commissioner of Income-tax v. Jay Engineering Works Ltd., (1978) 113 ITR 389 : (1978 Tax LR 972) indicates the extent to which the income tax authorities can place reliance upon a report submitted by the auditor, at page 974 of Tax LR.

It is quite competent for the income-tax authorities not only to accept the auditors'

report, but also to draw the proper inference from the same. The income-tax authorities can, therefore, come to the conclusion that, since the auditors were required by the statute to find out if the deductions claimed by the assesseees in their balance-sheets and profit and loss accounts were supported by the relevant entries in their account books, the auditors must have done so and must have found that the account books supported the claims for deductions.

Where the original account books of the assessee had been destroyed in a fire it was held that the Appellate Tribunal, in allowing deduction, could rely upon other material mainly consisting of the auditors' reports from which it could be inferred that the deductions were properly supported by the relevant entries in the account books.

22. Thus, the aforesaid position in law clearly demonstrates faith that various government departments have in the professional qualification, competency and integrity of a Chartered Accountant and hence the various statutory duties and responsibilities cast upon a Chartered Accountant under various provisions of the Act. There are other statutes like Co-operative Societies Act, Bombay Public Trust Act etc., where also the importance of the report of Chartered Accountant has been statutorily recognized and accepted. It is in the aforesaid context that the conduct of the respondent has to be tested and appreciated in the context of evidence placed on record".

9 That apart once statutory obligation is cast on a person and such statutory obligation provides for a period of limitation within which a particular document is required to be submitted, failure to do so within prescribed period of limitation, is by itself liable to be visited with penalty, unless explained by a reasonable cause. In the present case, at the cost of repetition, it is necessary to state that the respondent has no reasonable cause to plead, the only defence being - the respondent wanted to oblige his friend. In the circumstances, there is no infirmity in the finding recorded by the Disciplinary Committee and the Council in relation to the first charge.

10 In so far as the second charge is concerned, though Mr.Divetia made a valiant attempt, it is apparent from the record that both the Disciplinary Committee and the Council have recorded concurrent finding that Books of Accounts had in fact not been audited. The finding per-se, is a finding recorded after appreciation of evidence on record and as stated earlier, there is no submission that there was any violation of principles of natural justice. In the circumstances, even the second charge stands proved and there is no reason to interfere with the finding recorded by the Disciplinary Committee and the Council.

11 Therefore, in light of what is stated hereinbefore no ground is made out calling for any interference with the recommendation made by the petitioner Council and the same is accepted in toto. Accordingly the recommendation of the Council that the respondent be removed for a period of six months from the Register of Members stands accepted and the Council is directed to remove the respondent accordingly from the membership of the institute as the respondent is guilty of professional misconduct in terms of Sections 21 and 22 of the Act read with Second Schedule Part-I Clauses 5, 6 and 7 of the Act.

12 The Reference is accordingly disposed off.

(D.A.Mehta, J)

(H.N.Devani, J)

m.m.bhatt